

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MILTON D. McDANIEL,

Plaintiff,

v.

JOSEPH BEAHM,

Defendant.

ORDER

13-cv-797-wmc

In response to an order dated November 20, 2013, plaintiff Milton D. McDaniel has submitted a certified inmate trust fund account statement for six months preceding his complaint. Accordingly, the court must determine whether he qualifies for indigent status and, if he does, calculate an initial partial payment of the \$350.00 fee for filing this case.

In determining whether a prisoner litigant qualifies for indigent status this court applies the formula set forth in 28 U.S.C. § 1915(b)(1). According to this formula, a prisoner requesting leave to proceed *in forma pauperis* must prepay an initial partial filing fee that consists of 20% of the greater of - - (A) the average monthly deposits to his account; or (B) the average monthly balance in his account for the six-month period immediately preceding the filing of the complaint.

From plaintiff's trust fund account statement, 20% of the average monthly deposits is \$1.31, but 20% of the average monthly balance is \$4.99. Because the greater of the two amounts is 20% of the average monthly balance, or \$4.99, this is the amount plaintiff will be assessed as an initial partial payment of the filing fee. For this case to proceed, plaintiff must submit this amount on or before December 30, 2013.

If plaintiff does not have the money to make the initial partial fee payment in his regular account, he must arrange for prison officials to pay some or all of the assessment from his release account. This does not mean that plaintiff is free to ask prison officials to pay *all* of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$4.99 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to ensure that they are aware they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that:

1. The motion filed by plaintiff Milton McDaniel for leave to proceed without prepayment of fees (Dkt. # 3) is GRANTED.
2. Plaintiff is assessed \$4.99 as an initial partial payment of the \$350.00 fee for filing this case as an indigent litigant. He shall submit a check or money order made payable to the "Clerk of Court" in the amount of \$4.99 on or before December 30, 2013. Plaintiff is advised that, if he fails to comply as directed or show cause of his failure to do so, the court will assume that he does not wish to proceed and this case will be dismissed without further notice.

3. No further action will be taken in this case until the court receives plaintiff's initial partial filing fee as directed above and the court has screened the complaint as required by the PLRA, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 11th day of December, 2013.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge